

Quick Guide to IP for Startups

PAPULA  NEVINPAT

WHY SHOULD YOU TAKE CARE OF YOUR IP?

- Will patents facilitate venture capital investment?
- Can patents help a startup defend itself against attacks by incumbent rivals?
- Can patents help a startup stop the theft of its innovations by larger rivals?
- Can patents ensure a startup's freedom to operate?
- Can patents help a startup rapidly increase its market share?
- Can patents help startups form joint ventures and R&D partnerships?
- Can patents increase the chances that a startup will be acquired?
- Can patents help a startup get ready for an IPO?
- Will startups with intellectual property achieve greater long-term success than startups without it?
- Can patents help a startup launch a billion-dollar empire?

The answer to all of these questions is yes.

These are some of the reasons why patents and other types of intellectual property are so valuable to new businesses and should never be ignored. We want to help startups understand why it is extremely important to take care of your IP. At the same time, we hope that ever fewer companies will try to cope alone with their IP issues, forget them altogether, or fail to understand the key role of confidentiality.

WHAT ARE IP RIGHTS?

Below we'll give you short definitions of the most important IP terms and some basic information about the application process for different forms of IP protection:

IP

Intellectual Property rights include industrial property rights and copyright.

Industrial Property

An exclusive right for protecting inventions, signs that identify products and services or, for example, designs for the look of a product. Industrial property includes patents, utility models, designs, trademarks, domain names and a few other, although less common, forms of protection.

PATENT

What is a patent?

A patent is an exclusive right to use an invention commercially, such as to sell and manufacture a patented product and use a patented method. Patents are granted for a limited period of time.

How do you apply for a patent?

You apply for a patent by filing a written application with a national authority, which in Finland is the Finnish Patent and Registration Office (PRH). After filing, the patent office examines the patentability of the invention. Patenting requires patience as the process from filing to grant is rather lengthy. The length of the application process varies by country. In Finland it takes from 2 to 2.5 years to obtain a patent.

If you want to apply for a patent in more than one country, it's best to plan the application process by taking the market area of your product as well as the patenting costs in each country into account. If you want to apply for a patent in

European countries, you can file a European patent application. If you're aiming for the global market, you can start the application process through the international patent system (PCT).

What are the requirements for obtaining a patent?

An invention that can be protected with a patent must be new, involve an inventive step and be susceptible of industrial application. To assess whether your invention could be patented, consider consulting an experienced professional.

UTILITY MODEL

What is a utility model?

A utility model is an exclusive right, similar to a patent, to use an invention commercially. Utility models are more suited for inventions with a short commercial life, as the process for registering a utility model is faster than with patents. In comparison with patents, utility models are also less costly due to their shorter term of protection and a lower requirement of inventive step. In Finland, utility models are granted for a maximum of ten years.

How do you apply for a utility model?

Utility models can be registered without substantive examination by filing a written utility model application with the Finnish Patent and Registration Office. The application must contain a description of the invention and at least one claim. The application process for a utility model is fast, and a utility model is usually registered within a few months.

What are the requirements for obtaining a utility model?

The invention must be new and industrially applicable, but the requirement of inventive step is lower than with patents. Utility models are not granted for methods.

TRADEMARK

What is a trademark?

A registered trademark gives its owner an exclusive right to use the trademark and a right to prevent others from using confusingly similar marks. A trademark is a sign that distinguishes your products and services from those your competitors. Trademarks can be, for example, words, figures, personal names, shapes, colours and melodies. The registration is granted for ten years and can be renewed.

How do you apply for a trademark registration?

You apply for a trademark registration by filing a written application with a national authority, which in Finland is the Finnish Patent and Registration Office. If you want to apply for a registration in the EU, you can choose a European Union trade mark (EUTM).

What are the requirements for registering a trademark?

A registered trademark must be distinctive, i.e., it may not be descriptive of the product or service it represents. A registered trademark must also be distinguishable from others' similar products or services without any risk of confusion.

DESIGN PROTECTION

What is a design right?

A registered design, or registration of the look of a product, gives you an exclusive right to a specific design for a limited term. Registered designs are granted to protect the look of a product or a part of a product, or even the design of a detail in a product. The product may be any functional or decorative article (such as a mobile phone, a drill, a toothbrush, a vase, a piece of jewellery, and so on). Also, graphical

symbols, logos, computer icons, user interface graphics, even typefaces can be protected with a design right. In Finland and the EU, design rights are granted for a maximum of 25 years. You can also license or sell a design right.

How do you apply for a design?

You apply for a design by filing a written application with a national patent office, which in Finland is the Finnish Patent and Registration Office. The design right is only valid in the country where you file the application, except for a Community design which is valid in the EU. You can file a Community design application directly with OHIM or through WIPO.

What are the requirements for obtaining a design right?

A design must be new and have individual character in comparison with prior designs.

DOMAIN NAME

What is a domain name?

A domain name is an Internet address (such as www.papula-nevinpat.com). The applicable laws and registration practices depend on the domain name extension, which is normally national or regional (such as .fi, .us or .eu) or commercial (.com or .net).

According to the Finnish Domain Name Act, a Finnish .fi domain name can be practically any name from 2 to 63 characters with letters and digits as defined in the Act. A person's name can also be used as a domain name. However, domain names that infringe prior trademarks or other such protected names are not allowed.

In Finland as in other countries, a domain name registration is granted for a limited term, but the term can be renewed.

COPYRIGHT

Copyright protects literary and artistic works. The work must reflect its author's creative input and be independent and original. It may not be a copy or reproduction of a prior work. Copyright applies for example to fictional or descriptive representations in writing or speech, musical or dramatic works, cinematographic works, photographic works or other works of fine art, and products of architecture, artistic handicraft or industrial art. Also computer programs can be copyrighted. However, copyright doesn't apply to topics, ideas, methods, principles, information content or plots.

Copyright belongs to the author, who is always a natural person. A community or company may also acquire copyrights through agreements with the authors. In case of computer programs, copyright passes automatically to the employer under the Finnish Copyright Act. You are entitled to copyright right after you have created a work that passes the threshold of originality. In other words, you don't need to file any application, notice or other formalities to obtain copyright. Copyright is effective from the moment the work is created through the author's life and for 70 years after the author's death.

HOW TO MANAGE YOUR IP: THE IDEAL MODEL

On the following pages we'll share with you the ideal model on how to manage your IP. In all companies, it is important to assess whether IP issues should be considered as part of your business strategy. However, even if you haven't considered IP to be essential for your company's business, you may still find this model very useful. The key point is to evaluate your company's IP as a whole as we'll show in the model,

since all companies are likely to be concerned with issues such as domain names and social media, even copyrights in many cases.

The first step, right after you have started your business or even before that, is to see whether you have in-house competence to manage your IP issues on your own. If you have even the slightest doubt in this respect, consult a professional. You can start by contacting a public counselling organization for information, such as the Finnish Patent and Registration Office PRH and the ELY Centres, where you can consult their innovation expert, and innovation officers at various universities.

By discussing your situation at these IP counselling organizations you'll find out whether your protection process is a simple or more complicated one. If you're dealing with a simple protection process, you might get enough information from your conversations with an IP counsellor to learn how to proceed (such as how to acquire domain names). But if it seems that your IP protection process is even a little more complicated than that, consult a patent agency where you'll find the best professionals to advise you.

The second step is to try to identify every possible asset you have in your company that you might want to protect.

The third step is to go through your findings to see which of them are really worth protecting. Compare the potential gain you expect to get from your asset against the expected costs. Another thing to remember is that even if the strong forms of protection, such as patents, take considerable time and effort in terms of their application process, you can also sell and/or license these rights and so make a profit without actually using them yourself.

The fourth step is to choose the right forms of protection for the assets you want to protect. After you have decided which of your assets are worth protecting, it's important to choose the forms of protection that are best suited for each of them.

One essential thing is to protect the name of your company by reserving a domain name for it. Consider acquiring all domain name extensions you may need, as well as any identifiers for social media (Twitter, Facebook etc.) at the same time. Protect your known products with a trademark and the design of your products with a registered design. If you have inventions or other new products, apply for a patent, or at least for a utility model.

The fifth step is to decide what you are going to protect and in what ways. Make your decisions on a cost-to-value basis. In many cases, it can be a good idea to just consider confidentiality as, for example, a patent application process takes a great deal of effort and time, and so may become costly.

The sixth step is to start the actual protection process. This means preparing the necessary applications according to the forms of protection you have chosen for your assets.

The seventh step is to raise financing if you need to. In addition to public organizations, you can also get financing from private investors (venture capital investors), in which case it's likely that the finance for IP protection will be provided as part of a wider financing program for your company.

In all steps, we stress the importance of confidentiality from the start of the protection process until the applications have been filed with the PRH. Confidentiality is an absolute requirement in order to achieve successful results. Also, confidentiality plays a major part in the contracts you will make with your company's staff and partners – that includes all employment, cooperation and work order contracts.

It is as important to prepare an effective contract as it is to secure an effective protection process. You can get help in preparing your contracts from counselling organizations and other professionals, such as patent agencies or law firms that specialize in IP.

By following the above steps of this model, new businesses can deal with their protection process in the most effective way. The model guides you, step by step, in the course of your process and reduces the risk of making mistakes along the way.

If you decide right from the start to carry out your protection process with professionals, you don't need to worry about steps 2-6, as it is their professional duty to take care of all steps of the process to achieve the best possible outcome for you.

Do you need professional help in the protection process?

Most new businesses don't have the in-house competence to manage their IP issues – find counselling and/or use an outside professional in your protection process.

- ▲ IP counselling services
- ▲ IP agency services

YOU'VE JUST STARTED A BUSINESS

Do you need financing for the protection costs?

If your own resources are not enough, find out where you can get financing for the protection costs and apply for it.

- ▲ Public organizations
- ▲ Private investors



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Do you have something to protect?

Find every possible asset you might want to protect in your company.

2

Confidentiality during the entire protection process!

Start the protection process!

6

Which of your assets do you want to protect?

Find out what's worth protecting and what could be protected.

3

Make the decisions!

5

4

How are you going to protect your assets?

Choose the right forms of protection for the assets you want to protect.



- ▲ Patent
- ▲ Utility model
- ▲ Design
- ▲ Trademark
- ▲ Domain name
- ▲ Copyright

Papula-Nevinpat is a globally recognized patent, trademark and design agency. We represent a broad range of clients, from Fortune 500 companies to SME's and private individuals. We help our customers succeed through professional IP services rooted in the digital age. In addition to our Finland-based global operations, Papula-Nevinpat has a strong foothold in the Eurasian market with local offices in Russia, Belarus, Kazakhstan, Ukraine and Uzbekistan.



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